

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 04-10996 RWZ

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U.S. DISTRICT COURT
DISTRICT OF MASS.

*****)
HARVEY HOLMES and)
ANNE HOLMES,)
Plaintiffs,)
v.)
VOLVO TRUCKS NORTH)
AMERICA, INC., and)
ANDCO, INC.)
Defendant.)

**ANSWER AND JURY CLAIM OF THE
DEFENDANTS TO PLAINTIFFS' COMPLAINT**

Defendants, Volvo Trucks North America, Inc. and Andco, Inc. in answer to the Plaintiffs
Complaint state as follows:

FIRST DEFENSE

Parties

1. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1.
2. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.
3. The defendant, Volvo Truck North America, Inc., admits the allegations contained in Paragraph 3.
4. The defendant, Andco, Inc., admits the allegations contained in Paragraph 4.

Jurisdiction

5. The allegations contained in Paragraph 5 are statements of law requiring no answer of the defendants to the extent an answer is required the defendants deny same.

Facts

6. The defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6.

COUNT I

Product Liability vs. Defendant Volvo Trucks North America, Inc.

7. Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 6 of Plaintiffs Complaint as though set forth herein at length.
8. The defendant denies the allegations contained in Paragraph 8.
9. The defendant denies the allegations contained in Paragraph 9.
10. The defendant denies the allegations contained in Paragraph 10.
11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.
12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.
13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13.
14. The defendant denies the allegations contained in Paragraph 14.
15. The defendant denies the allegations contained in Paragraph 15.
16. The defendant denies the allegations contained in Paragraph 16.
17. The defendant denies the allegations contained in Paragraph 17.
18. The defendant denies the allegations contained in Paragraph 18.

COUNT II

Product Liability vs. Defendant Andco, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 18 of Plaintiffs Complaint as though set forth herein at length.

19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.
20. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20.
21. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.
22. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22.
23. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23.
24. The defendant denies the allegations contained in Paragraph 24.
25. The defendant denies the allegations contained in Paragraph 25.
26. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.
27. The defendant denies the allegations contained in Paragraph 27.
28. The defendant denies the allegations contained in Paragraph 28.

COUNT III

Breach of Warranty v. Volvo Trucks North America, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 28 of Plaintiffs Complaint as though set forth herein at length.

29. The defendant denies the allegations contained in Paragraph 29.
30. The defendant denies the allegations contained in Paragraph 30.
31. The defendant denies the allegations contained in Paragraph 31.
32. The defendant denies the allegations contained in Paragraph 32.
33. The defendant denies the allegations contained in Paragraph 33.

COUNT IV

Breach of Warranty v. Andco, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 33 of Plaintiffs Complaint as though set forth herein at length.

- 34. The defendant denies the allegations contained in Paragraph 34.
- 35. The defendant denies the allegations contained in Paragraph 35.
- 36. The defendant denies the allegations contained in Paragraph 36.
- 37. The defendant denies the allegations contained in Paragraph 37.
- 38. The defendant denies the allegations contained in Paragraph 38.

COUNT V

Negligence of Defendant Volvo Trucks North America, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 38 of Plaintiffs Complaint as though set forth herein at length.

- 39. The defendant denies the allegations contained in Paragraph 39.
- 40. The defendant denies the allegations contained in Paragraph 40.
- 41. The defendant denies the allegations contained in Paragraph 41.
- 42. The defendant denies the allegations contained in Paragraph 42.
- 43. The defendant denies the allegations contained in Paragraph 43.
- 44. The defendant denies the allegations contained in Paragraph 44.
- 45. The defendant denies the allegations contained in Paragraph 45.

COUNT VI

Negligence of Defendant Andco, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 45 of Plaintiffs Complaint as though set forth herein at length.

- 46. The defendant denies the allegations contained in Paragraph 46.
- 47. The defendant denies the allegations contained in Paragraph 47.
- 48. The defendant denies the allegations contained in Paragraph 48.
- 49. The defendant denies the allegations contained in Paragraph 49.
- 50. The defendant denies the allegations contained in Paragraph 50.
- 51. The defendant denies the allegations contained in Paragraph 51.

COUNT VII

Loss of Consortium v. Volvo Trucks North America, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 51 of Plaintiffs Complaint as though set forth herein at length.

- 52. The defendant denies the allegations contained in Paragraph 52.
- 53. The defendant denies the allegations contained in Paragraph 53.
- 54. The defendant denies the allegations contained in Paragraph 54.
- 55. The defendant denies the allegations contained in Paragraph 55.
- 56. The defendant denies the allegations contained in Paragraph 56.

COUNT VIII

Loss of Consortium v. Andco, Inc.

Defendant herein repeats answers to each and every allegation contained in Paragraphs 1 through 56 of Plaintiffs Complaint as though set forth herein at length.

- 57. The defendant denies the allegations contained in Paragraph 57.
- 58. The defendant denies the allegations contained in Paragraph 58.
- 59. The defendant denies the allegations contained in Paragraph 59.
- 60. The defendant denies the allegations contained in Paragraph 60.
- 61. The defendant denies the allegations contained in Paragraph 61.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

If there was any breach of warranty, express or implied, as alleged by the plaintiff, the plaintiff's failure to give notice of such a breach within the time required by the provision of Mass. G.L.c. 106 is a bar to recovery in this action.

FOURTH DEFENSE

If the plaintiff suffered damages as alleged, the said damages were caused, if at all, by persons or entities for whose conduct these defendants are neither responsible nor answerable.

FIFTH DEFENSE

If the plaintiff suffered damages as alleged, the said damages were caused in full or in part by the negligence of the plaintiffs, their agents, servants or employees, to a degree greater than any alleged negligence on the part of these defendants.

SIXTH DEFENSE

If the plaintiff suffered damages as alleged, the said damages were caused by dangers, the risk of which the plaintiff assumed as a matter of primary responsibility.

SEVENTH DEFENSE

If the plaintiff suffered damages as alleged, the said damages were caused, if at all, by the plaintiff's violation of his duty to act reasonably with respect to a product he knew or should have known to be potentially dangerous in its use and, in spite of that knowledge, the plaintiff voluntarily used the product, resulting in the alleged injuries.